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THE EU-AFRICA ENERGY COOPERATION: CHALLENGES AND OPPORTUNITIES FOR PUBLIC AND PRIVATE BUSINESSES

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Energy security, sustainable development and mutual benefits are the three keywords of the longstanding EU-Africa cooperation in the field of energy. Because of its huge energy reserves and its green energy potential[1], the African continent constitutes an area that cannot be underestimated by the European Union (see Annex I).

Since the Lomé I Convention[2], the EU has been committed both to help Africa to achieve its sustainable development targets and to secure its energy supplies by helping the African countries to create the right business environment for energy investments. But if this cooperation in the field of energy may create some business opportunities it will also generates some legal evolutions that undertakings must understand and adapt. Here the challenge will be to know how European and African businesses may benefit from this cooperation and how they may face up to the ongoing evolution of the regulatory frameworks of the EU's African energy partners.

This article aims at identify the legal framework created by the EU-Africa energy cooperation and to assess its value for public and private businesses. After a brief presentation of the scope of this cooperation, this article examines what is at stake for the public and private businesses and how they may benefit from this cooperation.

I) A GEOGRAPHICALLY AND SUBSTANTIALLY BROAD COOPERATION

Nowadays, at the exception of Libya[3] and Somalia, all the African countries are involved in an energy cooperation with the European Union. Schematically the EU entertains both multilateral and bilateral energy relationships with Africa.

There are three EU-Africa energy initiatives at the multilateral level: the EU-ACP[4] cooperation, the Union for the Mediterranean and the Africa-EU energy partnership.

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[1] Africa could play an important role in the context of climate change because of its potential as a renewable energy producer and its ability to bring access to modern and sustainable energy services to the peoples of Africa in the line with the objective of the development of the continent. Indeed, in many African countries, less than 10% of rural populations have access to electricity.

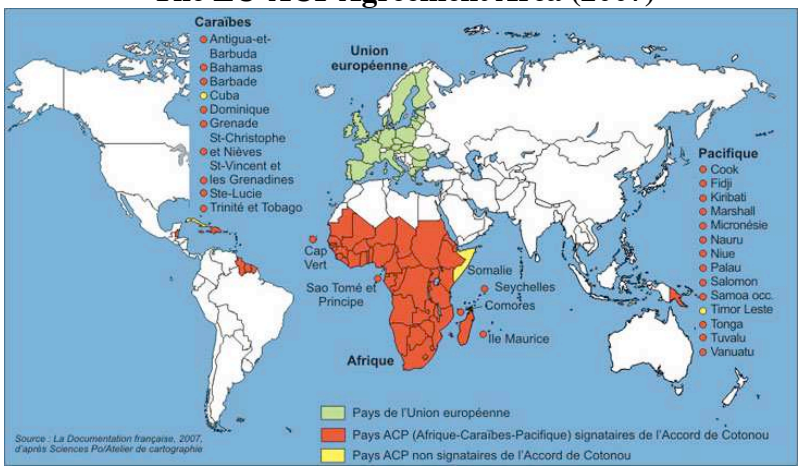
[2] See Art. 8, 28 and 46 of the Lomé I Convention [1975], *OJEC* L 25, 30 January 1976, p. 2.

[3] Nevertheless, it could be noted that the EU and Libya are currently negotiating an extended FTA that may covered energy issues.

[4] African, Caribbean and Pacific States.

The Cotonou Agreement[5] (hereinafter CA) was signed with the 77 ACP States on 23 June 2000 (see the map below).

The EU-ACP Agreement Area (2007)



In addition to commitments related to the negotiation of new economic partnership agreements[6] fully compatible with WTO law (see Art. 36 and 37 CA) and to the implementation of economic and institutional reforms and policies aiming at creating a favorable environment for the development of a dynamic private sector (see Art. 21 § 1 CA), this agreement contains some relevant provisions in the field of energy (see Art. 23 *h]*, 29 § 3 *a]*, 32 and 32 *a] vii]* CA). In brief, the EU-ACP energy cooperation aims at contribute to the development of a competitive energy sector and to promote the sustainable management of the ACP's energy resources by promoting renewable energy sources and low-carbon technologies. The implementation of these targets will be realized with the technical and financial assistance of the EU. The financial supports of the EU are granted through the 10th European Development Fund[7] (EDF), the European Investment Bank's loans[8] and the Global Energy, Energy Efficiency and Renewable Energy Fund (GEEREF) which was launched in 2004 under the initiative of the European Commission[9].

The second relevant initiative is the so-called Union for the Mediterranean (UfM) which is aimed to relaunch the the Euro-Mediterranean Partnership of 1995. The UfM involves the EU, its 27 Member States and all the Mediterranean countries (see the map below).

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[5] *NB*: The agreement amending for the second time the Cotonou Agreement is entered into force on 22 June 2010, see *OJEU* L 287, 4 November 2010, p. 3-49

[6] EPAs aim at creating a shared trade and development partnership which will lead to a gradual and controlled liberalization of trade in goods, services and investment. The Caribbean is the only region which has signed a regional comprehensive EPA to date. Ghana and Namibia had signed interim EPAs with the EU and South Africa is binding to the EU by a specific FTA agreement.

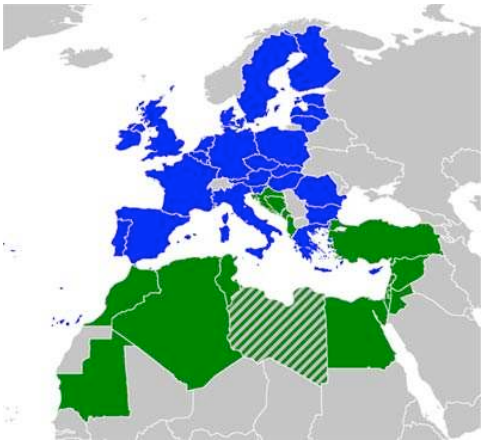
[7] The 10th EDF covers the period from 2008 to 2013 and provides €21 966 million to the ACP countries. See http://ec.europa.eu/europeaid/how/finance/edf_en.htm

[8] The EIB acting as a catalyst by financing a maximum of 50% of some public and private selected energy projects. See the EIB's Regional Brochure, *"EIB in the ACP Countries and the OCTs"*, 2008, 7 p., avalaible at http://www.eib.org/projects/publications/european-investment-bank-in-the-acps-and-octs.htm

[9] The EU, Germany and Norway are GEEREF's founding investors. For the first closing, GEEREF has secured a total of €108 million. See http://geeref.com/pages/home

In addition to a cooperation of the Mediterranean energy regulators aiming at create a stable and harmonized regulatory framework in view of the progressive establishment of integrated markets for electricity and gas in the Euro-Mediterranean region[10], the UfM aims at developing initiatives of common interest in key areas such as renewable energy development, infrastructure extension, investment financing and R&D (see notably the MED-ENEC I & II projects, the MED-EMIP, the MEDSTAT II initiative, and the the Solar Plan[11]).

The Union for the Mediterranean



An observer status is open to Libya but for now Libya doesn't participate to this initiative.

All the EU-Mediterranean energy projects are funded under the European Neighbourhood and Partnership Instrument[12], the EIB's Facility for Euro-Mediterranean Investment and Partnership (FEMIP), the InfraMed Infrastructure Fund and the abovementioned GEEREF.

Finally, the third multilateral initiative is the new Africa-EU energy partnership (AEEP). This sectoral partnership co-organized by the African Union Commission and the European Commission was launched in 2007 as one of the eight strategic partnerships of the new Africa-EU Joint Strategy[13]. This new partnership is aiming at complement existing EU-Africa multilateral cooperation structures and initiatives and to mobilize increased financial, technical and human resources in support of Africa's energy development. For the year 2020 Africa and Europe have agreed on ambitious energy targets, notably to bring access to modern and sustainable energy services to at least an additional 100 million Africans and to significantly increase the use of renewable energy in Africa (additional 10,000 MW of hydro-power, 5,000 MW of wind energy, and 500 MW of other renewable energies[14]). It may also be

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[10] Within the Mediterranean Working Group on Electricity and Natural Gas Regulation (MEDREG).

[11] For more information please visit http://www.medemip.eu/WebPages/Common/Default.aspx and http://www.enpi-info.eu/mainmed.php?id=96&id_type=3

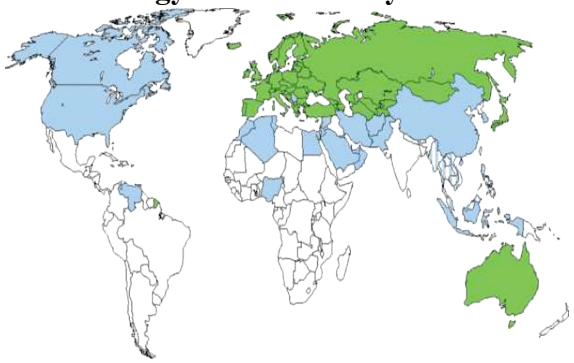
[12] The budget for the ENPI amounts to €11 181 million for the period 2007-2013.

[13] See http://ec.europa.eu/development/geographical/regionscountries/euafrica_en.cfm

[14] During the First High Level Meeting of the AEEP held in Vienna, the 14th-15th September 2010, the partners launched the Africa-EU Renewable Energy Cooperation Programme (RECP). For more information see http://www.aeep-conference.org/en/start

noted that the European Commission helped Algeria, Tunisia, Morocco (2001), Nigeria (2003) and Egypt (2008) to gain observer status at the Energy Charter Conference[15] and that the EU is currently working with some African energy resource-rich countries in order to help them to join the WTO[16] (see the charts below).

The Energy Charter Treaty and Africa



* Countries marked in green are signatories to the Energy Charter Treaty, and members of the Energy Charter Conference.
** Countries marked in blue are observers (blue vertical stripes denote the countries of ASEAN).
*** The Russian Federation signed the ECT and was applying it provisionally until 18 October 2009 inclusive.

Main African Energy Resource-Rich Countries and the WTO

WTO Member States	WTO Observers
Angola (1996)	Algeria (1987)
Cameroon (1995)	Equatorial Guinea (2008)
Chad (1996)	Libya (2004)
Republic of Congo (1997)	Sudan (1994)
Egypt (1997)	
Gabon (1995)	
Nigeria (1995)	
Tunisia (1995)	

***Note**: Dates under Observers States indicate countries who have starting accession negotiations to the WTO*.

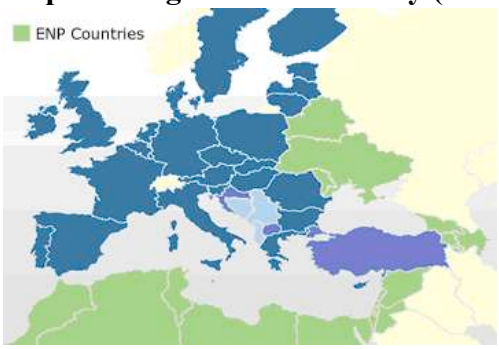
At the bilateral level the EU's energy cooperation with African countries exists through the four association agreements (AA) concluded with Algeria (Art. 61 AA), Morocco (Art. 57

[15] As Observers those countries have the right to attend all meetings of the Energy Charter Conference and of its subsidiary groups and to participate in the working debates. Once observer countries are fully familiar with the Energy Charter and its functions the Energy Charter Conference may invite them to accede to the Energy Charter Treaty.

[16] On the energy producers countries and the WTO see M.G. DESTA, "The Organization of Petroleum Exporting Countries, the World Trade Organization, and Regional Trade Agreements", *JWT*, 2003, vol. 37, n° 3, p. 523-551. NB: Algeria, Angola, Libya, Nigeria are currently the four African Member States of the OPEC.

AA), Tunisia (Art. 57 AA) and Egypt (Art. 53 AA) and the European Neighbourhood Policy Action Plans (see the map below).

The European Neighbourhood Policy (ENP) Area



Source: EEAS
Note: *Libya and Algeria are not yet covered by an ENP Action Plan.*

In brief, the abovementioned association agreements energy provisions aim at upgrading the institutional, legislative and regulatory environments in Algeria, Morocco, Tunisia and Egypt and to develop comprehensive partnerships between European and African companies as well as to support and promote private investment, renewable energies, energy efficiency and the modernization and development of energy networks including their linkage to those of the EU.

Finally, the EU provides financial and technical support to ENP countries to support institutional and economic reforms for a better business climate and a more environmentally protective regulatory framework in those countries. Despite some structural weaknesses (soft obligations and hortatory commitments to good environmental practices), the last World Bank's *'Doing Business'* report shows good progress in improving the business climate in the ENP region[17] and the ENP partners took thorough steps to amend their legislation[18].

II) WHAT IS AT STAKE FOR EUROPEAN AND AFRICAN BUSINESSES?

First of all, it must be noted that public and private companies are the substantial actors in the field of energy. They take financial risks to build fruitful energy businesses when the public authorities efforts focus on lifting barriers to investment and to guaranty the public interest (i.e. energy security, economic competitiveness and environmental protection in the field of energy policy). This state of play is well recognized by the EU-Africa public partners this is why the EU-Africa energy cooperation agreements and initiatives provide sound frameworks for the participation of non-state actors[19].

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[17] See the joint IFC-WB publication, *Doing Business 2011: Making a Difference for Entrepreneurs*, available at http://www.doingbusiness.org/reports/doing-business/doing-business-2011

[18] Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament and the Council, *Taking stock of the ENP, Implementation of the ENP in 2009 - Sectoral Progress Report*, Brussels, 12 May 2010, SEC (2010) 513 final, p. 15.

[19] For example, see Art. 2 and 4 to 7 of the Cotonou Agreement about the participation of non-state actors.

In reality, public and private businesses may benefit from this cooperation in several ways. Indeed, the EU-Africa energy cooperation contributes to some extent that things happens from a political, economic and legal point of view.

Firstly, the EU-Africa cooperation allows that many energy projects (new pipelines, power stations, etc.) are accepted and promoted not only from the business world but also from the political actors. This is a precious element in such a complex continent.

Secondly, by setting ambitious energy targets (e.g. bring access to modern energy to an additional 100 million Africans by 2020) and by opening EU financial support for new energy projects, the EU-Africa energy cooperation offers new economic opportunities for public and private businesses.

Finally, by helping the African countries to review their energy and environmental legislations, the EU-Africa energy cooperation is creating a better regulatory environment in Africa, that is the key to attract private capital for the massive investments needed to assure the EU and African energy security[20].

But public and private businesses also have to adapt to this cooperation. The EU will grant political and financial incentives to public and private actors only in return for progress on relevant reforms and energy projects developments. Here non-state actors will have to contribute to the good implementation of this cooperation by using their influence before their respective public authorities and by changing their practices in compliance with the EU's funding conditionality[21] and the new coming regulatory framework in Africa.

In brief, the EU-Africa cooperation in the field of energy constitutes both a source of opportunities and challenges for public and private businesses, this is why those actors should take a constant and renewed interest in the evolution of this cooperation that will shape the EU and African energy future.

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[20] For an illustration of these political, economic and legal functions of the EU's external energy policy, see the speech of the EU Commissioner for Energy, Günther OETTINGER, at the Desertec Barcelona Conference, *"Energy in the EU from Northern Africa: a Realistic Option?"*, Barcelona, 26 October 2010, SPEECH/10/601, available at http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/601&format=HTML&aged=0&language=EN&guiLanguage=en

[21] See *"EIB in the ACP Countries..."*, *op. cit.*, p. 6.

ANNEX I

ENERGY IN AFRICA

Africa's Oil Reserves and Production at End 2009

	Oil Proved Reserves (Thousand Million Barrels)	Oil Production (Thousand Barrels Daily)
Algeria	12,2	1811
Angola	13,5	1784
Cameroon	-	73
Chad	0,9	118
Republic of Congo	1,9	274
Egypt	4,4	742
Equatorial Guinea	1,7	307
Gabon	3,7	229
Libya	44,3	1652
Nigeria	37,2	2061
Sudan	6,7	490
Tunisia	0,6	81
Other Africa	0,6	79
Total Africa	127, 7	9705

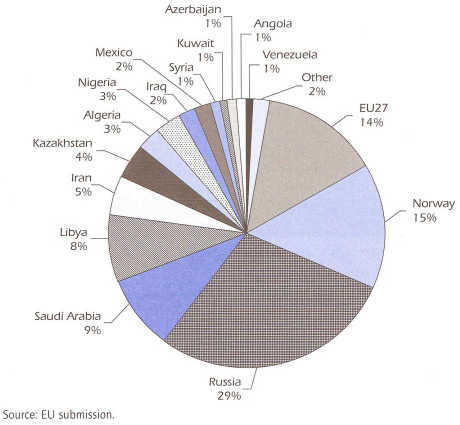
Africa's Natural Gas Reserves and Production at End 2009

	Natural Gas Proved Reserves (Trillion Cubic Metres)	Natural Gas Production (Billion Cubic Metres)
Algeria	4,50	81,4
Egypt	2,19	62,7
Libya	1,54	15,3
Nigeria	5,25	24,9
Other Africa	1,27	19,5
Total Africa	14,76	203,8

Source: *BP Statistical Review of World Energy, June 2010*.

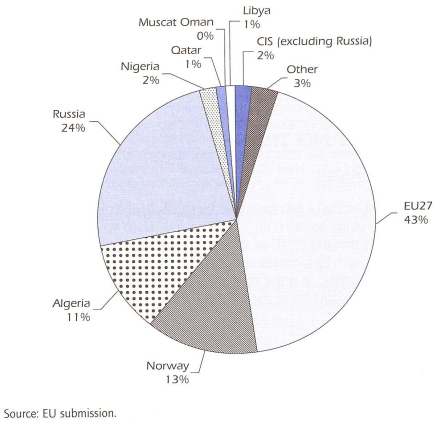
THE EU'S ENERGY DEPENDENCY

Origin of Oil Consumed in the EU-27, 2005



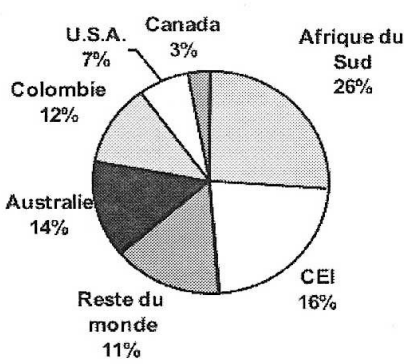
Source: IEA, *Energy Policies Review - The European Union*, Paris, OECD/IEA, 2008, p. 64.

Origin of Natural Gas Consumed in the EU-27, 2005



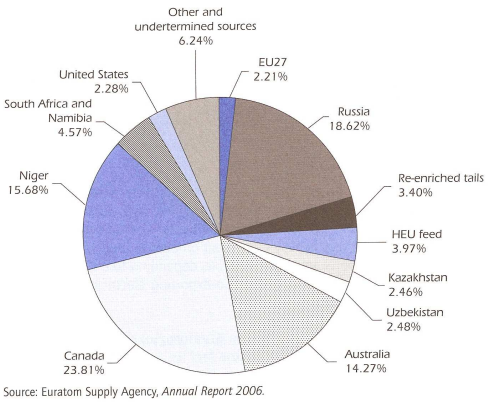
Source: IEA, *Energy Policies Review - The European Union*, Paris, OECD/IEA, 2008, p. 62.

Origin of Coal Consumed in the EU-27, 2005



Source: S. FURFARI, *Le monde et l'énergie : enjeux géopolitiques 1) Les clefs pour comprendre*, Paris, Technip, 2007, p. 347.

Supply of Uranium to the EU-27, 2006



Source: IEA, *Energy Policies Review - The European Union*, Paris, OECD/IEA, 2008, p. 66.